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C O N F I D E N T I A L SECTION 01 OF 02 HONG KONG 002258

SIPDIS

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SUBJECT: MSARG SUBMITS REVISED ARTICLE 23 BILL TEXT TO
LEGISLATIVE ASSEMBLY

REF: HONG KONG 2109

Classified By: Acting Consul General Christopher J. Marut for reasons 1
.4(b) and (d)

11. (C) Summary and comment: After reviewing public comments regarding the Basic Law Article 23 draft text issued in October, the Macau Special Administrative Region Government (MSARG) formally tabled a revised bill with the Legislative Assembly (LA) December 17. The LA will begin consideration of the bill December 19, followed by a committee markup. An Executive Councilor suggested to us that, given Chinese New Year and the National People's Congress and Chinese People's Political Consultative Conference meetings in Beijing (at which many Macau officials will participate), a final vote is not likely before mid-April. The revised text appears to limit the ability of the government to retroactively declare materials secret and has removed some "preparatory acts" as crimes. Other improvements to the text claimed by government officials, however, are open to interpretation. As before, the government has the votes to get what it wants, but it has also demonstrated it is responsive to public comment, so we do not rule out further modification to the bill. End summary and comment.

Legislative Process

12. (SBU) The consultation period for the initial draft Basic Law Article 23 bill (BL 23) concluded November 30. The Macau Special Administrative Region Government (MSARG) reported receipt of 784 comments: 693 supporting the bill, 20 opposing, and 71 neutral. The MSARG then revised the text and submitted its new version of the bill to the Legislative Assembly (LA) December 17.

13. (SBU) Mechanically, the next steps are as follows:

-- An initial LA vote to receive or reject the bill. The LA has scheduled initial discussions for December 19, and it is likely they will vote to receive the bill that day.

-- Referral of the bill to one of the three committees (unlike the Hong Kong LegCo, the LA does not have topic-based committees; committees are assigned bills based on workload.) (Note: Each committee has one member recognized as a democrat. End note.) The committee will review the text line-by-line and can propose amendments by majority vote, which are referred to the MSARG. Members not on the committee are also able to propose amendments.

-- If the MSARG accepts an amendment, it will itself draft the revised language. The full LA does not vote on committee amendments.

(Note: Secretary for Administration and Justice (SAJ)
Florinda Chan stated that the government would continue to

accept proposals from the general public, which it could then pass to the LA as revisions. End note.)

-- The committee will refer its text, as amended, for a final vote by the LA. Unlike the Hong Kong LegCo, the LA votes article-by-article on the bill. While articles can be rejected individually, the full LA does not have the power to amend the text.

¶4. (C) The relatively rapid issuance of the revised text is most likely due to Chief Executive (CE) Edmund Ho's "duty visit" to Beijing, for which he is scheduled to depart December 18. In a conversation with us December 15, LA and Executive Council member Leonel Alves (protect) said that Chinese New Year (January 26) plus the National People's Congress and Chinese People's Political Consultative Congress meetings (March, date TBD) meant that the final LA vote might not occur until mid-April.

State Secrets

¶5. (C) Under Article V, "Theft of State Secrets" (Article VI in the initial draft), the original language required the court to seek a ruling from the CE on whether materials or information contained state secrets. The CE, after consulting with the central government, would issue a legally-binding certification for such secrets. The revised text states: "If necessary, judicial organs may (vice "should") obtain certification from either the Chief Executive, or from the central government via the Chief

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Executive, as to whether the aforementioned document, information or material is or is not already defined as a state secret."

¶6. (C) These changes appear to grant the courts discretion in considering whether materials could contain secrets, potentially thus circumventing the broad definitions of state secrets in use in Mainland China. Moreover, the language specifying that the question to be answered is whether the material in question is "already defined" as secret may offer some protection against retroactive classification. There is still no specific definition of the criteria for classification. The previous broad categories of potentially secret material -- national defense, foreign affairs, and the vague "matters regarding relations between the central government and Macau SAR government under the Basic Law" -- remain unchanged.

Preparatory Acts

¶7. (C) The revised text no longer criminalizes acts in preparation either to illegally acquire state secrets or to incite rebellion or mutiny by the PLA garrison. Acts in preparation to commit treason, secession, or subversion (specified as overthrow of the government or some form of violent coercion) remain punishable by a maximum of three years' imprisonment. SAJ Chan claimed in a press conference, and the government repeated in its official release, that the revised text had removed as a crime acts in preparation to commit sedition. However, the text released by the government still contains language criminalizing preparation for sedition. Like the original draft, the text does not specify what constitutes a preparatory act.

Public Interest Defense

¶8. (C) SAJ Chan contends that, since only public officials may be charged with illegal disclosure of state secrets ,

reporters are protected from prosecution. This is correct with regard to the text of Article V (formerly Article VI) Section 3. However, as "prying into (ci tan)" state secrets is still undefined as a term but clearly defined as a crime (Article V/Section 1), while a reporter might not be at risk of prosecution for disclosure of a secret, s/he might well be prosecuted for acquiring the secret in the first place.

MARUT